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SUMMARY RECORD OF THE 1325th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 7 July 1994, at 10 a.m.

Chairman: Mr. ANDO

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GE.94-17490 (E)

The meeting was called to order at 10.20 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Second periodic report of Togo (CCPR/C/63/Add.2; HRI/CORE/1/Add.38)

1. At the invitation of the Chairman, Mr. Assouma, Mr. Kpotsra and Mr. Gnondoli (Togo) took places at the Committee table.

2. The CHAIRMAN welcomed the delegation headed by the Adviser to the Constitutional Chamber of the Supreme Court, Mr. Assouma, whom he called upon to introduce the country's second periodic report (CCPR/C/63/Add.2; HRI/CORE/1/Add.38).

3. Mr. ASSOUMA (Togo) said that, for the past several years already, considerable efforts had been made in Togo to promote and protect human rights. The prominent place given to such rights by the Government was borne out by the establishment in 1987 of the National Human Rights Commission - the only body of its kind in the African continent and an appropriate follow-up to the various regional and international commitments undertaken by Togo in the field of human rights. Togo had ratified or acceded to a large number of international human rights instruments, including the International Covenant on Civil and Political Rights, which had entered into force for it on 24 August 1984. Togo had fulfilled its obligations under the Covenant by submitting its initial report in March 1989 and now its second periodic report contained in documents CCPR/C/63/Add.2 and HRI/CORE/1/Add.38. The report as a whole provided information on the land and its people, traced Togo's political history and described the general legal framework within which human rights were protected, as well as the mechanisms and institutions set up for that purpose. The report also gave a detailed analysis of all the articles of the Covenant, highlighting difficulties encountered in incorporating particular provisions into internal legislation.

4. Since the submission of the report, a number of noteworthy events had taken place, in particular the organization of presidential and legislative elections. On 25 August 1993, Mr. Eyadéma, representing the Rassemblement du Peuple Togolais (RPT), had been re-elected President of the Republic. The results of elections to the National Assembly held subsequently on 6 and 20 February 1994 were the following: RPT and Union Togolaise pour la Justice et la Démocratie (UJD): 37 seats; Comité d'Action pour le Renouveau (CAR): 34 seats; Union Togolaise pour la Démocratie (UTD): 6 seats; Coordination des Forces Nouvelles (CFN): 1 seat. On the basis of those results, the first Government of the Fourth Republic had been formed and its action programme had been adopted by the National Assembly on 24 June 1994. Although the report indicated that all the provisions of the Covenant had been incorporated into new legislation (the Press Code, the Electoral Code, the Charter of Political Parties) and that the new Constitution gave a prominent place to human rights issues, the commendable efforts in the cause of human rights that had been made since 1987 had been seriously hampered by the social and political disturbances in the country during its period of transition towards democracy. The new Government was doing its utmost to ensure the safety of its citizens, rebuild national unity and restore mutual trust, as well as to enforce the

legislation which would lay the foundations for a State governed by the rule of law. In conclusion, he welcomed the opportunity for a renewed and constructive dialogue with the Committee. His Government was confident that the Committee would provide Togo with all necessary assistance in fulfilling its obligations under the Covenant.

5. The CHAIRMAN invited the Togolese delegation to respond to the questions in section I of the list of issues, which read:

"I. Constitutional and legal framework within which the Covenant is implemented, state of emergency, non-discrimination, equality of the sexes, protection of the family, right to take part in the conduct of public affairs, and rights of persons belonging to minorities (arts. 2, 3, 4, 23, 24, 25, 26 and 27)

(a) Please provide further information on any factors or difficulties which have impeded the implementation of the Covenant during the transitional period. In particular, comment on the impact of the internal disturbances described in paragraphs 58, 59 and 64 of the core document on the exercise of the rights guaranteed under the Covenant, particularly its articles 4, 25 and 26.

(b) In the light of the provisions of article 25 of the Covenant, please clarify what steps have been taken by the authorities to give effect to the conclusions of the Joint Commission and the proposed draft legislation referred to in paragraphs 60 and 61 of the core document.

(c) Please clarify to what extent the provisions of the Covenant have been taken into account in the formulation of the new Constitution and implementing legislation.

(d) Please clarify the functions and activities of the newly established Ministry of Human Rights and the National Human Rights Commission, particularly with regard to the handling of complaints falling within the competence of the courts (see paras. 47-56 of the core document).

(e) What steps have been taken to disseminate information, in the various languages spoken in Togo, on the rights recognized in the Covenant and on the First Optional Protocol? How far has the public been informed of the Human Rights Committee's consideration of the report?

(f) Please provide current data concerning the number and proportion of women in the political, economic, social and cultural life of the country.

(g) In the light of paragraph 13 of the report, please clarify what measures have been taken to eliminate the remaining areas of discrimination against women and to bring Togolese legislation into full conformity with the provisions of the Covenant.

(h) With reference to paragraphs 15 and 16 of the report, please clarify what safeguards and effective remedies are available to individuals during a state of emergency and whether, in accordance with article 4, paragraph 2, of the Covenant, the right to life and the prohibition of torture are included among the fundamental rights that cannot be derogated from under any circumstances.

(i) Please elaborate on practical measures taken to ensure the effective enjoyment by persons belonging to the minorities specified in paragraph 2 of the core document of their rights under article 27 of the Covenant.

(j) What practical measures are being taken to overcome inter-ethnic and inter-tribal hatreds which impede the full enjoyment of rights and freedoms under the Covenant?"

6. Mr. ASSOUMA (Togo), replying to question (a), said that the establishment of the National Human Rights Commission in June 1987 had been welcomed by the people of Togo and the international community as a harbinger of a more democratic society. It had been the President's intention to move gradually towards a system of democracy, taking into account the real needs of the nation, and thus total freedom of the press had only finally been authorized on 30 August 1990. However, the trial of five citizens in October 1990 on charges of circulating leaflets that criticized the head of State had prompted outbreaks of violence by anti-Government protesters calling for a swifter transition to democracy. The series of events described in paragraph 58 of the core document had been carefully orchestrated by the opposition parties to halt the process of democracy already under way. In the view of the opposition parties, democracy could not be achieved unless the President resigned from office, the RPT was disbanded and its members were removed from key positions in government. Such claims ran counter to the provisions of article 25, paragraphs (a) and (b), of the Covenant. Moreover, on 25 March 1993, the Togolese capital had been besieged and subsequently attacked by an armed commando force, causing a number of military and civilian casualties. The State services and the national economy had later ground virtually to a halt, inflicting great human suffering and sacrifice, following the protracted general strike declared by the opposition parties and their trade unions on 16 November 1993. Since 1990, the democratic process in Togo had regrettably been marked by a deep lack of understanding among national politicians, resulting in serious outbreaks of violence and even political assassinations, not to mention the exile and expulsion of thousands of Togolese citizens from their homes, in particular those who, like the President, belonged to the Kabyè ethnic group. The atmosphere of political tension, racial and ethnic hatred and intolerance had seriously impeded the exercise of the rights guaranteed inter alia under article 26 of the Covenant.

7. With regard to question (b), he said that the Joint Commission had been set up in the light of the distressing events already described, the country's politicians having finally realized that the process of democratization could only be completed through national unity and on the basis of power-sharing. The conclusions issued by the Commission had related essentially to security, and a special force called the "1993 reconciliation and security operation force" had been set up by virtue of a decree of 18 March 1993 to ensure their implementation. The prime task of the Commission was to ensure the safety of citizens and the protection of property in the territory of Togo before, during and after the presidential and legislative elections. In order to prevent further outbreaks of violence, it had been empowered to take all steps necessary to maintain public order, on a strictly neutral basis. The special force had been composed of members of the national gendarmerie, the police and territorial security guards. A national day of reconciliation had been declared to regain the confidence of the population, thereby permitting the organization of a constitutional referendum and thereafter peaceful, free and democratic elections, in conformity with article 25 of the Covenant. The first Government of the Fourth Republic had recently been given a vote of confidence by the National Assembly, and it was to be hoped that, through the swift implementation of appropriate legislation, Togolese citizens would soon be able to exercise their rights.

8. With regard to question (d), he said that justice was the guardian of rights and freedoms and that the National Human Rights Commission and the Ministry of Human Rights played an important part in the protection and defence of human rights. Togo had ratified more than 25 international legal instruments, including the International Covenant on Civil and Political Rights and the Optional Protocol thereto and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

9. However, it was not enough merely to adopt and ratify legal instruments. They had to be implemented in order to ensure that all citizens without distinction enjoyed the rights in question. Therefore, his Government had, under Act No. 87 of June 1987, established the National Human Rights Commission to deal with human rights matters. The task of the Commission was to ensure the promotion and defence of human rights, and to consider and recommend to the authorities any bills concerning human rights with a view to their adoption. It could also express opinions on human rights issues. Any individual who considered that his rights had been violated or that he had suffered as a result of an act or omission by the Government might submit a petition to the Commission, which acted solely as a mediator since its decisions were not binding.

10. The Commission intended to continue its activity aimed at enlightening members of the public with regard to their rights through seminars, symposia and a monthly publication. His colleague would provide information concerning the activities of the newly established Ministry of Human Rights.

11. Referring to question (h), he said that in accordance with article 4, paragraph 2, of the Covenant, the right to life was sacrosanct and was protected by the Togolese Constitution. The State had an obligation to guarantee life and security under Togolese law, and the death penalty might only be imposed in exceptional circumstances.

12. The practice of torture was the subject of a strict prohibition which could not be derogated from under any circumstances.

13. With regard to the prohibition of arbitrary arrest, he said that the conditions under which an individual might be questioned and arrested were strictly circumscribed by the law. The National Human Rights Commission also played an important role in informing citizens and in training State officials. It must not be forgotten that the great majority of Togolese were illiterate and had to have their rights explained to them. The National Commission did so through seminars and visits to villages and outlying districts.

14. Freedom of thought, conscience and religion was established under article 25 of the Constitution of Togo. Those who exercised their religion could do so freely, subject to respect for the law.

15. Mr. GNONDOLI (Togo) noted that the Ministry of Human Rights, which had been established in January 1992, had been given the task of implementing the Government's human rights policy and coordinating initiatives in that area. The Government had thought that it would be useful to supplement the National Human Rights Commission with a Ministry to deal with problems that might arise in that area. The Ministry's action was geared to promoting human rights and instructing the Togolese people in their rights and duties. Efforts would be made to ensure separate areas of competence for the two institutions and to avoid duplication of work.

16. Referring to section I (c) of the list of issues, he said that the Constitution of the Fourth Republic, which had been promulgated on 14 October 1992, had 50 articles that drew extensively on the International Covenants on Human Rights. For example, it contained provisions relating to the protection of life and the security of the individual, and a ban on torture.

17. On question (e), he said that the provisions of the Covenant and the Optional Protocol were the subject of lectures and discussions organized by the National Human Rights Commission and the Ministry of Human Rights.

18. Referring to question (f), he noted that at the present time there was only one woman in the Government and one woman in the National Assembly. Out of 65 judges, only 8 were women. However, in various administrations, women occupied high political and administrative posts. Women also played an active role in trade unions and political parties.

19. In response to question (g), he said that paragraph 13 of the report had perhaps given the impression that there was a certain degree of discrimination against women in the country. In principle at least, no such discrimination existed, since the Constitution provided that men and women were equal before the law, and were entitled to have equal access to the public service and enjoy equal pay for equal work. Education for girls as well as for boys was compulsory up to the age of 15, and both women and men were entitled to vote on reaching the voting age of 18. In that regard, Togolese legislation was in full conformity with the provisions of the Covenant.

20. However, there were certain sociological considerations which in Togo, as in many other countries, affected women's role in society. For example, in rural communities, where work was shared, women were usually given less arduous tasks than men. The population required more instruction if it was to discard such socio-cultural prejudices. He pointed out, however, that in 1980 the Family Code had given Togolese women the right to inherit property.

21. In reply to question (i), he said that Togo was a mosaic of different peoples, comprising more than 36 ethnic groups, which had for some time coexisted harmoniously. Since well before independence, there had been no ethnic or tribal wars, apart from certain political disturbances. No one ethnic group had ventured to set itself up as a separate entity, claiming specific rights. Ethnic groups were distributed throughout the territory, and did not live in specific geographical areas. Accordingly, movements claiming autonomy for particular groups, such as were seen in other countries, were unknown in Togo.

22. Mr. ASSOUMA (Togo), referring to the right of women to inherit property, said it had to be admitted that, despite the provisions of the Family Code, in practice the situation was little changed. According to customary law, as still administered by local chiefs, women were required to hand over any property they had inherited to their husbands on marriage. It was only when such cases came to court that women's newly established rights in the matter were upheld.

23. The CHAIRMAN thanked the delegation of Togo for its replies to the questions in section I of the list of issues and invited comments from members of the Committee.

24. Mr. NDIAYE congratulated the authorities of Togo on having sent a high-level three-man delegation at a time when many African countries were experiencing financial difficulties.

25. By and large, Togo had complied with the Committee's guidelines in preparing its report. Unfortunately, however, the report seemed to have been very hastily drafted, and did not give a very clear picture of the real situation in the country.

26. Togo had introduced some significant reforms, notably the Constitution of 1992, which was unusual in that it was to be regarded as incorporating, in article 50, all the international instruments to which Togo was a party. Togo had also introduced a multiparty system, which was reflected both in the membership of the National Assembly and in the composition of the Government. A Ministry of Human Rights, as well as a National Human Rights Commission had been established, which ought to have created a climate favourable to the promotion and protection of human rights. Unfortunately, the report confined itself for the most part to listing constitutional or legal provisions, and did not indicate how those provisions were implemented in practice.

27. Events in Togo between 1990 and 1992 had shown that the composition of the army was a matter for considerable concern. It appeared that some 90 per cent of military personnel came from the same ethnic group as the President, which would imply that in time of crisis other ethnic groups were

unlikely to feel completely secure. According to reports, the Prime Minister had at one time been forcibly prevented from moving freely about the country. He would appreciate further information on that point.

28. Article 150 of the Constitution provided that, in the case of a coup d'état, it was the "most sacred right" and "most imperative duty" of citizens to organize themselves to "check any illegitimate power", which would seem to reveal a fairly widespread mistrust of the army. What was being done to ensure that membership of the army was more balanced and more representative of other ethnic groups in Togo? The reconciliation and security operation force was presumably intended to be a national force, and not one representing a particular ethnic group.

29. The representative of Togo had defined the role of the National Human Rights Commission, but in somewhat abstract terms. How was the Commission financed, and what material and human resources did it have at its disposal? By whom were its members appointed, and did they have the endorsement of all the political parties? Was it a truly national, and truly autonomous, body?

30. During the very difficult period of transition which Togo had experienced, numerous cases of torture, extrajudicial executions and massive human rights violations had been reported. The report had nothing to say on that very important subject. Had any investigations been carried out to track down those responsible, had the victims been awarded compensation, and had members of the security forces and the army, who would seem to be the guilty parties, been prosecuted?

31. It would appear that inter-ethnic hatred, particularly between the Kabyè of the north and the Moba of the south, had been exacerbated during the period 1990-1992, when mass exoduses to Benin and Ghana had taken place. At one point, the situation had been so tense that France had contemplated sending armed forces to separate the various ethnic groups. Had those thus exiled been able to return to their homes, and had their property been returned to them intact? What steps were being taken by the authorities to solve these problems? Was it part of the programme of the Ministry of Human Rights and of the National Human Rights Commission to find ways of promoting understanding between the different ethnic groups?

32. While many of the questions posed arose from Togo's written report, the Committee also had other sources of information on which it based its questions. He stressed, however, that it was in no way the intention to sit in judgement on Togo: rather, the Committee wished to assist the country in its efforts to promote and protect human rights.

33. Mr. AGUILAR URBINA agreed that the Committee was honoured to have such a high-level delegation attending its session to participate in the discussion on the report of Togo. Two candidates from Togo would be standing in the next round of elections to the Committee, which was an indication of that country's interest in the Committee's work.

34. Nevertheless, he felt bound to say that he considered the report a bad one. He wondered how a State which had just carried out a complete overhaul of its legal system in order to incorporate the provisions of the Covenant

into a new Constitution, a new Press Code, a new Electoral Code, and a new Charter of Political Parties, could make no mention of the provisions of any of those instruments in its report. It had been stated that the process of renewal which had taken place in the country had involved three elections: first, a referendum, by which a new Constitution had been adopted by a majority of some 99 per cent; secondly, the election, or re-election, of the President of the Republic, again by a 99 per cent majority; and, thirdly, the election of a new National Assembly, comprising representatives of a variety of political parties. How many of those parties were opposition parties? It had been reported that the opposition party candidate had been prohibited from taking part in the presidential elections simply because his medical certificate was not in order. How could that be reconciled with the requirement that there should be no undue restriction on the conduct of elections?

35. Although article 50 of the Constitution stated that the Covenant was an integral part of the Constitution, it would seem that it was not in fact being implemented. In recent years, grave human rights violations had taken place in the country, but no explanations were given in the report. The Committee needed to have more information about any difficulties experienced by Togo, particularly in the context of section I (a) of the list of issues.

36. In regard to article 4 of the Covenant, the report gave rise to some concern. Paragraph 15 of document CCPR/C/63/Add.2 merely stated that the Constitution did not specify the rights in respect of which derogations were permitted, and that the conditions for the application of a state of emergency should be determined by an "organic law". No details about that law were given. What guarantees were there that article 4, paragraph 2, of the Covenant was being implemented in Togo?

37. It would appear that, since independence, Togo had been in a permanent state of emergency. Paragraph 26 of the core document (HRI/CORE/1/Add.38) indicated that the Constitution adopted in 1979 had filled a constitutional vacuum. The fact that that constitutional vacuum had lasted for 12 years appeared to indicate that there was something of a tradition in the country that, although constitutions might exist, they would not be implemented. That would still seem to be the case: despite the fact that the right to life was guaranteed, reports from numerous sources indicated that cases of extrajudicial executions, murder and torture had occurred, mostly perpetrated by government forces but also by forces of the opposition.

38. The representative of Togo had suggested that the Fourth Republic had ushered in a new era, and had, so to speak, wiped the slate clean. He himself had considerable doubts on that score. Despite the existence of a large number of provisions to guarantee human rights, he felt that from the initial periodic report to the one now under consideration there had been no advance, but rather a step backwards.

39. On the matter of minorities, it had been variously stated that the ethnic group to which the President belonged had suffered discrimination and had been forced to take refuge in the south of the country; and that ethnic groups did not inhabit specific geographical areas, and that they coexisted in complete

harmony. He would appreciate clarification of that point, in view of the fact that all reports received of torture and executions were related specifically to inter-ethnic conflicts.

40. Mr. SADI asked whether the delegation of Togo could explain why there had been such a delay in the submission of its second periodic report, which had been due in 1990. The report provided very scant information, perhaps not intentionally but due to lack of knowledge of the reporting procedure. He hoped that the next periodic report would be a fuller one.

41. The impression he gained from the report was that while, on the one hand, Togo was making great efforts to promote human rights by setting up new institutions and adopting a new Constitution, on the other it seemed unable to fulfil its aspirations, and hatred, animosity and intolerance between ethnic groups persisted. Paragraph 58 of the core document stated that the period of democratic transition had given rise to "substantial social and political tension": what was the reason for that tension? Was it because so many different ethnic groups, and possibly different religions, had to exist side by side? Although the report stated that many provisions of the Covenant were now reflected in organic laws, not enough was said on that subject, and in general the report did little to update the information given in the initial report (CCPR/C/36/Add.5). For instance, paragraph 28 of the earlier report had stated that Togolese jurists took the view that accessions to treaties proclaimed in the preamble to the Constitution meant that the instruments in question were now incorporated in the body of the Constitution and could be regarded as constitutional enactments. That was perhaps the opinion of some jurists, but the Committee needed more concrete assurances on the matter.

42. Again, the initial report had stated that the provisions of the Covenant could be invoked before the courts. Had they in fact ever been so invoked in practice? Paragraph 35 of the initial report stated that ratified treaties and agreements took precedence over the laws, provided that such treaties and agreements were applied by the other party. He was not sure what was meant by that clause, and would welcome clarification.

43. Although the setting up of the National Human Rights Commission was a major step forward, he was unsure what its practical effects would be. It had been stated that if violations continued the Commission would take immediate steps to put an end to them: did that imply that it would only act in the case of a continuation of such violations?

44. In conclusion, he believed that the new Commission should not address violations on a basis of confidentiality, but on the contrary should give them the maximum publicity, since otherwise its impact would be weakened.

45. Mrs. EVATT joined in welcoming the declared commitment of the Togolese Government and its delegation to the maintenance of human rights, and acknowledged that there had been some progress in the transition towards multiparty democracy and improved conditions of life for that country's citizens.

46. Problems and difficulties had been evoked by the head of the delegation in amplification of information in the core document and the report. There

had been no mention, however, of the numerous deaths, disappearances and allegations of torture - well-documented by non-governmental organizations and the special rapporteurs of the Commission on Human Rights - which had accompanied the social violence alluded to, or of the troubling role played by the armed forces in that violence. She cited in particular the events of November 1991, May, July and October 1992, and January and March 1993, remarking that few of the incidents then occurring, whose victims seemed in many cases to have been supporters of democratic change, had been investigated or had resulted in prosecutions.

47. According to the Togolese Constitution, the armed forces must be under civil control; she asked whether special rules governed entry, search and arrest by those forces or their authority in respect of public meetings or demonstrations; she inquired more especially how extrajudicial killings perpetrated by members of the armed forces were investigated.

48. Concerning the elections of February 1994, she asked which party had assumed office and from which party the Prime Minister had been appointed. Had those elections been monitored by independent observers and, if so, what had they reported? Had the armed forces been visible during the ballot, or had the agreement to confine them to barracks been respected? She further asked the Togolese delegation to comment on reports that Mr. Gaston Aziaduvu Edeh, a member and elected deputy of the Comité d'Action pour le Renouveau (CAR), an opposition party, had been kidnapped by the army and later found killed.

49. She welcomed the official declaration of commitment to the work of the National Human Rights Commission, but was concerned about the budget, resources and independence of that body, and about reports that its functioning had been obstructed. Had the obstructions been removed, and who was the Commission's current president? Had the Commission reported on any human rights abuses since the February elections?

50. In many countries, the actual letter of the law forbade discrimination between the sexes, while the social reality was very different. She inquired what was being done in Togo to ensure that customary law was being replaced by the equality provisions of the Constitution. Were the rights of women actively protected by national machinery? Did any national policies, laws and programmes exist for the eradication of the persistent practice of female circumcision or to prevent the trafficking in women that still occurred for purposes of prostitution both in Togo and abroad?

51. The CHAIRMAN drew the Togolese delegation's attention to the fact that some of the questions put orally under section I of the list of issues might more properly relate to other sections. He trusted that the delegation would order its replies in such a way that all questions were answered.

52. Mr. EL SHAFEI said he interpreted the presence of the Togolese delegation as a token of the Government's commitment to secure the respect and application of human rights and implement political and constitutional reform. He expressed the hope that the dialogue with the Committee would be mutually beneficial.

53. He had been somewhat enlightened by the second periodic report as to the constitutional and legal framework adopted in Togo to ensure the exercise of the rights and freedoms contained in the Covenant. Unhappily, however, according to other sources of information, the real state of affairs did not reflect the will for change, and left a great deal to be desired. Intervention, or non-intervention, as the case might be, on the part of the authorities and more especially the armed forces were sometimes responsible for a deterioration rather than an improvement in the situation.

54. Article 147 of the Togolese Constitution declared: "The Togolese Armed Forces shall be a national, republican and apolitical army. They shall be submitted totally to constitutional political authority that is established through regular means." He asked whether those provisions were fully respected in practice. A negative reply to that question would not only be disappointing, since the article, like many others in the Constitution, was admirably drafted; it might in great measure explain the present circumstances.

55. The head of the Togolese delegation had provided oral information concerning the February 1994 elections; but he had omitted to speak of any guarantees to underpin the electoral process and ensure that it was open and free from interference. Certain non-governmental organizations had remarked on pressures and irregularities; the alleged expulsion of two members of an international monitoring team from the country during the earlier presidential elections had not been a very happy precedent. Democratic elections should ensure the peaceful transfer of power between representatives of the people. It was not certain that such was the case in Togo, or that article 25 of the Covenant was fully respected; moreover,the actual legal status of that instrument as a whole in Togo, remained unclear.

56. He shared Mr. Aguilar Urbina's concerns with regard to the circumstances and consequences of the state of emergency.

57. Article 150 of the Togolese Constitution stated: "In case of a coup d'état or other forcible coup, all members of the government and of the National Assembly shall have the right and the duty to take any and all means to re-establish constitutional legitimacy. As a recourse, they may call upon any existing agreements of military or defence cooperation." The second sentence contained a most unusual provision. The implication seemed to be that domestic affairs could be internationalized; he would welcome further information concerning the "agreements" referred to, and an explanation of the article as a whole.

58. Mr. MAVROMMATIS joined other members in expressing the hope that the Committee would have a fruitful dialogue with the Togolese delegation and at the same time endorsed the views of other members of the Committee on the shortcomings of the report, especially when it was set against information from other sources. It was not enough simply to enumerate constitutional provisions; what the Committee wanted was specific information on the mechanics of protection, together with examples, including findings and

jurisprudence. Concerning the elections in Togo, for instance, a whole series of questions remained unanswered. More generally, and in order to obtain more feedback from countries, he submitted that the Committee's concerns should be disseminated to a larger number of potential interlocutors, notably in circles that dealt with human rights, than appeared to have been the case in Togo.

59. Another source of disappointment to him was the apparently limited follow-up to the earlier commitment by the Togolese authorities to anchor the provisions of the Covenant more firmly in the revised Constitution. For example, in comparison with article 2 (1) of the former, article 11 of the latter contained a rather threadbare list of grounds on which discrimination was prohibited; he cited colour, national or social origin, property and birth as significant omissions from that list.

60. On a more positive note, he warmly welcomed Togo's ratification of the Optional Protocol. It only remained to be demonstrated - and he would ask the same of any other reporting country - that the legal and administrative machinery was in place for the provisions of the Optional Protocol to be fully respected; such machinery should also include ways and means of implementing the views and decisions of the Committee in a given case.

61. Mr. POCAR welcomed the Togolese delegation and recalled the very favourable atmosphere of the international seminar on human rights in Africa, held in Lomé, at which he had made the acquaintance of the head of the delegation, some six years earlier.

62. The report before the Committee, although in conformity with its guidelines, was narrow in scope. He noted in particular that it made little if any reference to customary law and its administration, despite the place which such law occupied in the country; some oral information had, however, just been provided in that respect.

63. He commended the place accorded to human rights in the new Constitution and pointed out that article 50 was particularly significant, indicating as it did that international instruments relating to human rights were "an integral part" of the Constitution. On the other hand, however, article 14 stipulated that "the rights and freedoms guaranteed by [the] Constitution" were subject to certain restrictions. The latter were not shown to correspond exactly with those for which allowance was made in the Covenant and, as a result, there could be confusion or differences of interpretation.

64. During the Committee's consideration of the initial report of Togo, the delegation had stated unequivocally that the Covenant could be invoked directly before the courts and enjoyed primacy in law. Somewhat disturbingly, although the second periodic report declared that "All the provisions of the Covenant" were now incorporated into the country's legislation, article 104 of the Constitution seemed to leave the way open for setting those provisions aside through a finding of unconstitutionality of the relevant laws. He said he would welcome assurances that that was not in fact the case; and asked whether the Constitutional Court had made any such findings.

65. He inquired as to any measures taken to replace custom by law, notably in matters related to the treatment of women, such as those mentioned by Mrs. Evatt, and of children. That topic was, of course, a delicate one, involving cultural rights as well as the rights of minorities, but he nevertheless drew the Togolese delegation's attention to paragraph 8 of the Committee's general comment on article 27 of the Covenant, where it was stated that "none of the rights protected under article 27 ... may be legitimately exercised in a manner or to an extent inconsistent with the other provisions of the Covenant."

The meeting rose at 1.05 p.m.